

OFFICE OF THE CITY MANAGER

NO LTC# 334-2013

LETTER TO COMMISSION

TO:

Mayor Matti Herrera Bower and Members of the City Commission

FROM:

Jimmy L. Morales, City Manager

DATE:

September 9, 2013

SUBJECT: TRANSMITTAL RESOLUTION FROM MEMBERS OF THE CITY OF MIAMI BEACH

ART IN PUBLIC PLACES COMMMITTEE

This Letter to Commission (LTC) transmits a Resolution adopted by the Art in Public Places (AiPP) Committee, dated August 20, 2013, regarding their opposition to an off-leash dog area surrounded by a landscape buffer in the area of the obstinate lighthouse sculpture located at the southwestern portion of South Pointe Park.

Please let me know if you have any questions.

C: Kathie G. Brooks, Assistant City Manager Mark Taxis, Assistant City Manager Joe Jimenez, Assistant City Manager

Chair, Megan Riley and Members of the Art in Public Places Committee

CITY CLERK'S DEFICE

A RESOLUTION OF THE ART IN PUBLIC PLACES COMMITTEE OF THE CITY OF MIAMI BEACH, FLORIDA, OPPOSING AN OFF-LEASH AREA SURROUNDED BY A LANDSCAPE BUFFER IN THE AREA OF THE "OBSTINATE LIGHTHOUSE" SULPTURE LOCATED AT THE SOUTHWESTERN PORTION OF SOUTH POINTE PARK.

WHEREAS, the Art in Public Places (AiPP) Committee shall recommend to the City Commission on legislation concerning public works of art in the city, according to the City of Miami Beach Code Article VII, Art in Public Places Section, DIVISION 2, Section 82-562 (7), Powers and Duties; and

WHEREAS, on June 21, 2013, the AiPP Committee unanimously passed a motion opposing the creation of an off-leash dog area surrounded by a landscape buffer in the area of the obstinate lighthouse sculpture and notified the Mayor and Commission (LTC # 213-2013); and

WHEREAS, the proposed 42" landscape buffer for an off-leash dog area surrounding the obstinate lighthouse may have a negative impact on the AiPP program and its ability to have internationally renowned artists like Tobias Rehberger apply to future Call to Artists; and

WHEREAS, the City should abide by its contractual agreements with artists, especially as we go forward with major public art opportunities at the Miami Beach Convention Center; and

WHEREAS, the City of Miami Beach Artist Agreement, Artist Rights states in, "Section 8.1 – The City agrees to make all reasonable efforts to maintain the integrity of the Artwork, and will not knowingly make any use of the Artwork in a manner which would reflect unfavorably on Artist's name or reputation, or which could violate the spirit of the Project or interfere with its creative intent and Section 8.3 - The City agrees to take such reasonable measures, as it deems necessary, in its reasonable discretion, to maintain the Artwork," and

WHEREAS, the Visual Artists Rights Act of 1990 (VARA), <u>17 U.S.C. § 106A</u>, a <u>United States</u> law protecting artist rights allows an artist to prevent the indicated acts provided that those acts harm the artists honor or reputation; and

WHEREAS, on March 6, 2012, the Design Review Board (DRB) Staff Report No. 22894, recommended against the off-leash dog area surrounding the obstinate lighthouse for the following reasons: "1) it would be inconsistent with the South Pointe Park master planned location for the AiPP sculpture previously approved by the Design Review Board; 2) any form of perimeter landscaping material or additional park signage in this location would distract from and have a significant adverse impact upon the design integrity of the lighthouse sculpture as well as its open lawn setting, and: 3) this location could limit the close enjoyment of the AiPP lighthouse sculpture to only people, including young children, who are comfortable being around dogs that are off-leash," and

WHEREAS, on May 20, 2013, the Artist, Tobias Rehberger notified the City and said "If the public art project was for a dog park I would not have considered the invitation," and

WHEREAS, on May 28, 2013, the South of Fifth Street Neighborhood Association, sent a letter to DRB stating "the city has not made any serious effort to solicit widespread community feedback, and the city has also failed to seek the opinions of professionals in park design and landscape architecture in determining which area of the South Pointe Park is best suited for the

off-leash dog area. Some of the issues the city has failed to adequately address in the matter before you include that their proposed "landscape buffer" will likely prove more than a temporary visual barrier to large dogs, who will easily trample the plantings," and

WHEREAS, on July 2, 2013, the DRB Staff Report, File No. 22977, stated "staff has a serious concern for a landscaped off-leash dog area surrounding the 'obstinate lighthouse' sculpture, for the following reasons: "1) it would be inconsistent with the South Pointe Park master planned "open" location for the AiPP sculpture previously approved by the Design Review Board; 2) any form of perimeter landscaping material or additional park signage in this focal location immediately adjacent to Government Cut and the Basin would distract from and have a significant adverse impact upon and detract from the design integrity of the lighthouse sculpture as well as its intended "open lawn" setting; 3) this proposal could seriously limit the close enjoyment of the AiPP lighthouse sculpture to only people, including young children, who are comfortable being around dogs that are off-leash; and 4) the physical proximity of off-leash dogs base of the sculpture, which incorporates park seating, will almost certainly result in an unsanitary condition for park users, especially children and tourists, who may chose to sit there to enjoy the surrounding park and waterfront views," and

WHEREAS, on July 9, 2013, the Artist, notified the City and said "installation of an off-leash dog area would implicate major changes to the sculptures' surrounding and therefore be a clear violation of the artist agreement between the City of Miami Beach and myself (see Article 8.1): "The City agrees to make all reasonable efforts to maintain the integrity of the Artwork, and will not knowingly make any use of the Artwork in a manner which would reflect unfavorably on Artist's name or reputation; or which could violate the spirit of the Project or interfere with its creative intent," and

WHEREAS, on July 9, 2013, the City was notified there are maintenance and conservation issues with the creation of an off-leash dog area surrounding the obstinate lighthouse, by Rosa Lowinger of Rosa Lowinger & Associates, "to my knowledge there is no such coating that protects from urine," and Rudy Ayan, Vice-President, Team Contracting, Inc. (the general contractor who built the lighthouse), "I have spoken to... a representative at Matthews Paint Company... a leader in the industry, and she has advised that there is no urine coating that they are aware of in the marketplace, that an 'anti-urine' coating simply does not exist."

NOW, THEREFORE, BE IT DULY RESOLVED BY THE ART IN PUBLIC PLACES COMMITTEE OF THE CITY OF MIAMI BEACH, at its regular meeting on August 20, 2013, unanimoulsy passed a resolution opposing an off-leash area surrounded by a landscape buffer in the area of the "obstinate lighthouse" sculpture at the southwestern portion of South Pointe Park.

PASSED and ADOPTED this _____ day of August, 2013.

MEGAN BILEY, CHAIRPERSON